

REMARKS

Claims 1-20 are in the case and presented for consideration.

The undersigned thanks the Examiner for the courtesies extended during the recent telephone interview concerning this application. A summary of the interview is provided following this section of the response.

The specification was amended to clarify certain awkward or imprecise phrases. No new matter was added.

Independent claims 1, 8, 15, and 17 were edited for conciseness, so that the claims are more clearly understandable. Claims 1, 8, 15, and 17 were rewritten as to form only. No substantive changes have been made to the claims. Therefore, a new search should not be required. No new matter was added.

In the previous Office Action response, applicant unintentionally moved the phrase "in step (d) that were successfully received and the erroneously received payload blocks that were successfully" from step (f) to step (d) of claim 8. This was a typographical error and the phrase has been eliminated entirely since it is also unnecessarily repetitive or redundant.

The changes to the claims were not required to overcome prior art or for any other statutory reason. For this reason applicant is entitled to a full scope of protection, including any judicially created doctrines such as the Doctrine of Equivalents.

Turning to the merits, claims 1, 6-8, 14-16, and 20 were rejected under 35 U.S.C. 103(a) as being obvious from WO 0045543 to Sipola in view of published U.S. Patent Application 2002/0075873 to Lindhorst-Ko et al.

Applicant respectfully traverses the rejection because the Office has not established a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, the prior art references when combined must teach or suggest all the claim limitations. The rejected claims recite at least one element or limitation that is not taught or suggested by either of the cited references alone or in combination. For example, independent claim 1 recites:

"transmitting a sequence of packets from a source to a destination node, each packet in said sequence including a sequence identifier and having a plurality of payload blocks."

Neither of the cited references, alone or in combination, teaches or suggests payload blocks. In the recent Examiner interview, which is reported below, the Examiner explained that the "data blocks" disclosed in Sipola are construed as the claimed packets and that the "header" disclosed in Sipola is comparable to the claimed "payload blocks" because both can be allegedly transmitted from a transmitter to a receiver. In the Office Action, the Office also reasons that Sipola "may vary within the scope of the attached claims (pg.19)" and that payload blocks "can also be checked and corrected like the header blocks as desired if needed." Therefore, the Office deems that "it would have been a matter of design choice to a

person of ordinary skill in the communication art, at the time the invention, to set the data blocks [of Sipola] as payload blocks." Applicant respectfully disagrees.

"The consistent criterion for determination of obviousness is whether the prior art would have *suggested* to one of ordinary skill in the art that a claimed process should be carried out and would have reasonable likelihood of success, viewed in light of the prior art. *Both* the suggestion and the expectation of success must be found in the prior art, not in the applicant's disclosure." (emphasis added) *In re Dow Chemical Co.*, 837 F.2d 469, 5 U.S.P.Q. 1529 (Fed. Cir. 1988). That the teachings of the prior art *can* be combined or modified does not make the resultant combination *prima facie* obvious. The Office appears to assert that a header in Sipola *can* be modified to a payload block because both payload blocks and headers can be checked and corrected. But, the desirability for making such a modification is not suggested by Sipola. The Office has not shown any teaching or suggestion by either of the cited references that the claimed methods should be carried out with payload blocks. "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art *suggested* the desirability of the modification." (emphasis added) *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). Thus, the rejection is only based on conclusions, which the examiner gleans from applicant's disclosure and the rejection is therefore based only on prohibited hindsight.

It is further noted that Sipola's statement that the invention "may vary within the scope of the attached claims (pg.19)" is common "stock" language that is vague and does not specifically suggest anything. There is no indication, explicit or implicit, that the applicant in Sipola possessed any knowledge that their invention should be practiced with payload blocks.

Because there is no teaching or suggestion to modify or replace a header with payload blocks, the Examiner appears to be relying on personal knowledge as the rationale for the rejection, which is equally improper. If the Office is relying on personal knowledge, then applicant respectfully requests the Examiner to submit an affidavit under 37 C.F.R. 1.104(d) on the record for this case. Because the request for this affidavit is based on the Office's position in the present Office Action, the affidavit must be submitted regardless of whether this amendment places the claims in condition for allowance.

In addition, neither of the references, alone or in combination, teach or suggest "transmitting a sequence of packets from a source to a destination node, each packet in said sequence . . . having a plurality of payload blocks." The Office believes that this limitation is disclosed from Sipola. Applicant respectfully disagrees. According to Sipola, a header is not generated and added until after a request for retransmission is made (see Fig. 3, steps S13-S17; abstract; page 13, lines 4-10). In step S13, a reception failure is detected. (page 12, lines 29-32). In step S15, a request for retransmission is made. (page 12, lines 34-35 – page 13,

lines 1-2). Then in step S17, a header is generated and added to the respective data block for retransmission. (page 13, lines 7-8). Therefore, in the first step of a transmission of data blocks from the transmitter device to the receiver device, the data blocks do not contain a header yet. Therefore, Sipola cannot be deemed to teach or suggest the first claimed step of transmitting a sequence of packets, each packet having a plurality of payload blocks, as recited in the first step of claim 1.

Also, neither of the cited references, alone or in combination, teach or suggest the above-recited limitation of each packet in said sequence having a *plurality* of payload blocks. In Sipola, only a single header is added to each data block. (See S17 in the abstract; page 13, lines 5-10). A plurality of headers is not disclosed. Applicant also notes that Sipola does not refer to "header blocks." Sipola only refers to a "header". It is applicant's understanding from the Examiner interview that the "header blocks" mentioned in the Office Action refer to the header added in step S17 in Sipola.

Furthermore, claim 1 also recites:

"determining whether at least one of the plurality of said payload blocks within a particular packet is lost in said transmission"

Neither of the cited references, alone or in combination, teach or suggest this step.

The Office submits that Sipola discloses a method including the step of "determining whether at least one of the plurality of the data blocks (header blocks)

within a particular packet is lost in the transmission." Applicant respectfully disagrees.

The single header in Sipola is not lost. Nor is the header sought to be corrected. As explained above, the first transmission does not contain the header. The header is only added to a *retransmitted* data block to represent a reference to a physical location of an earlier transmission of the block in a sequence of transmitted blocks, where the earlier transmitted data block may have been lost. The only step in which a determination is made about an element being lost is step S13, involving a determination of whether a failure in reception of data blocks occurred (i.e., determining whether the data blocks are lost). The abstract indicates that the Sipola method involves "checking (S12, S13), at said receiver device, *whether the transmission of a respective data block has failed.*" On page 12, lines 12-14 read, "As a result of executing a step S13, it is determined whether *a failure in reception of a particular data block* has occurred." (emphasis added). However, the header is not even included in the data block when the determination as to failure in reception is made in step S13. The header is only added to the data block in step S17, which follows the determination made in step S13. Thus, there is no determination as to whether the retransmitted single header is lost. Sipola does not teach or suggest "determining whether at least one of the plurality of said payload blocks within a particular packet is *lost* in said transmission."

Accordingly, the cited references also do not teach or suggest:

"subsequently transmitting a request for retransmission of said particular packet containing said lost payload block."

In Sipola, the header is not contained in the data block prior to the request for retransmission and was not previously lost.

Also, the cited references do not teach or suggest:

"combining said stored payload blocks only with said lost payload block of a retransmitted packet in sequential order to form a complete packet, or transmitting another request for retransmission of said particular packet containing said lost payload block to the source node only when a complete packet cannot be formed."

The Office summarizes that "Sipola discloses a method, comprising the steps of . . . combining the stored header blocks with the lost header block retrieved from the subsequent transmission in sequential order." Applicant respectfully disagrees. As explained above, Sipola does not teach or suggest that a header is lost. Nor does Sipola teach or suggest that a stored header is combined with a lost header. On page 13, lines 12-14 explain:

"In a following step S16, at the transmitter device side, the retransmission request is received. In response thereto, a flag T associated to each data block is set to a value of "1", and a *header* is generated and added to the respective data block, of which the associated flag T has been set to "1". Then, step S17, the respective data block identified by the flag T=1 and the *header* is retransmitted.

The receiver reads the information contained in the header, and subsequently combines the retransmitted block, i.e. the data contained in the data block, with the originally transmitted block containing the same data."

A single header is generated and attached to a data block only to identify the location of previously transmitted data blocks so that the data contained within the data blocks can be combined. Once the header is added to the data block for retransmission in step S17, Sipola does not indicate that it is combined with another header.

Additionally, Sipola does not teach or suggest:

"storing other payload blocks that are successfully received within said particular packet in a storage medium for subsequent retrieval."

That is, once the packets are "successfully received" at the destination node, they are "stored" for "subsequent retrieval." By contrast, Sipola only discloses a receiver device, which "receives the transmitted data blocks and checks for transmission failure" (page 12, lines 8-10) and, "reads the information contained in the header, and subsequently combines the retransmitted block . . . with the originally transmitted block." (page 13, lines 12-14). There is no indication that once the receiver device successfully receives a transmission, the transmission is stored in a storage medium for subsequent retrieval. As the Office is no doubt aware, all limitations of a claim must be considered meaningful, and, "the PTO must consider all claim limitations when determining patentability of an invention over the prior art." *In Re Lowry*, 32 USPQ2d 1031, 1034 (Fed Cir. 1994).

If the Office deems that the claimed limitation is taught or suggested, the Office must provide the location in the prior art where the claimed limitation is



taught or suggested in order to establish a *prima facie* case of obviousness. A vague reference to the abstract, pages 12-14, or Fig. 3, which broadly detail the entire method of that invention will not establish the location in the prior art where the claimed limitation is taught or suggested since applicants submit that those pages and drawings do not disclose the claimed limitation. The Office should at least point to the specific lines, which allegedly disclose this limitation.

If the Office's rejection is based on personal knowledge, then applicant respectfully requests the Examiner to submit an affidavit under 37 C.F.R. 1.104(d) on the record for this case. Because the request for this affidavit is based on the Office's position in the present Office Action, the affidavit must be submitted regardless of whether this amendment places the claims in condition for allowance.

In summary, a substantial portion of claim 1 is not taught or suggested by the cited references, either taken alone or in combination. Based on the Office's analysis of Sipola, it appears that the rejection is based on the "idea" of transmission and retransmission of packets. Applicant respectfully points out that the invention cannot be tested on the basis of whether the "idea" of transmission and retransmission of packets is patentable. "Under the patent statute, Title 35 U.S.C., "ideas" are not patentable; claimed structures and methods are. Reducing a claimed invention to an "idea," and then determining patentability of that "idea" is error. Analysis properly begins with the claims, for they measure and define the invention." *Jones v. Hardy*, 727 F.2d 1524, 220 USPQ 1021 (Fed. Cir. 1984).

"There is 'no legally recognizable 'essential' element, 'gist', or 'heart' of the invention in a combination patent." *Aro Manufacturing Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 345 (1961). As applicant has clearly shown in the analysis of the claims, there are several elements and limitations, which are not taught or suggested by either of the cited references taken alone or in combination.

Therefore, claims 1 and dependent claims 2-7 are believed to be patentable.

Independent claim 8 recites substantially the same elements and limitations as claim 1 and is therefore patentable for at least the same rationale. Claims 9-14 depend from claim 8 and are believed to be patentable for at least the same reason as claim 8.

Independent claim 15 recites an apparatus with a process configured to execute substantially the same steps as recited in claim 1 and is therefore patentable for at least the same reasons. Additionally, claim 15 also recites that the apparatus comprises a memory, a processor, and a set of instructions stored in said memory and executed by the processor configured for executing the method. The cited references do not teach or suggest these elements configured for executing the method. Since the Office has not addressed these elements, the Office has failed to establish a *prima facie* case of unpatentability for this claim. The Office must show where each element and limitation is found in the prior art. *Ex Parte Naoya Isoda*, Appeal No. 2005-2289, Application 10/064,508 (BPAI

Opinion October 2005). Claim 16 is dependent from claim 15 and is therefore believed to be patentable for at least the same reason as claim 15.

Independent claim 17 recites a system with various elements for carrying out substantially the same steps as recited in claim 8. Therefore, claim 17 is believed to be patentable for at least the same reasons as claim 8. Claims 18-19 depend from claim 17 and are believed to be patentable for at least the same reasons as claim 17. Also, claim 19 recites that, "the demodulation format is specified by the IEEE 802.11 standard." The Office has not addressed this limitation and therefore, has not established a *prima facie* case of unpatentability.

Independent claim 20 was rejected under the same rationale as claim 1 and is therefore believed to be patentable for the same reasons as discussed above for claim 1.

Accordingly, the application and claims are believed to be in condition for allowance, and favorable action is respectfully requested. No new matter has been added.

STATEMENT OF THE SUBSTANCE OF THE INTERVIEW

On Wednesday, February 15, 2006, the undersigned participated in an interview with examiner Phung Chung of Art Unit 2138.

First, the undersigned requested clarification of which element in Sipola (WO 0045543) is deemed to cover the claimed "packets". The Examiner explained that the "data blocks" described in Sipola are construed to cover the claimed packets.


Next, the undersigned requested clarification as to what part of Sipola (WO 00/45543) is deemed to disclose "each packet . . . having a plurality of payload blocks". The Examiner explained that the "data blocks" are construed as the claimed packets and that each packet having a plurality of payload blocks would be obvious in view of the data blocks containing a header added in step S17.

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If any issues remain which may be resolved by telephonic communication, the Examiner is respectfully invited to contact the undersigned at the number below, if such will advance the application to allowance.

The Commissioner is hereby authorized to credit any overpayment or charge any fee (except the issue fee) to Account No. 14-1270.

Respectfully submitted,

  
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